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#MeToo's darkest side: Dialogue about workplace sexual harassment overlooks threat of physical assault or rape

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A few years ago, [Kim Warnick](#), a 26-year-old Harvard University graduate, was a low-level employee at a subsidiary of TE Connectivity, a technology hardware firm that had spun out of Tyco International. As part of her role at TE Subsea Communications in Eatonville, New Jersey, Warnick helped plan and run a three-day corporate leadership conference at a New Hampshire hotel, which she says was attended by many high-level employees.

Warnick says on the final night of the conference — Tuesday, June 2, 2015 — a manager followed her to her room in the hotel where they were both staying. There, she says, he raped her.

Warnick did not immediately report the incident to human resources. The manager worked in a different office, and they rarely interacted. She recalls thinking at that time that "if I report this, my future at this company is done. I'll just become 'that person that got raped.'" She said she did, however, tell a few confidants inside and outside of the company, two of whom have confirmed to the Business Journal that Warnick told them details of her story within several days or weeks after it happened. Warnick says she later did report the rape to TE SubCom's head of human resources, after being offered another job role at the company, as well as to the police department in New Castle, New Hampshire. The company did not find conclusive evidence of Warnick's allegation and, although the police investigation is still open, the manager apparently continues to work there.

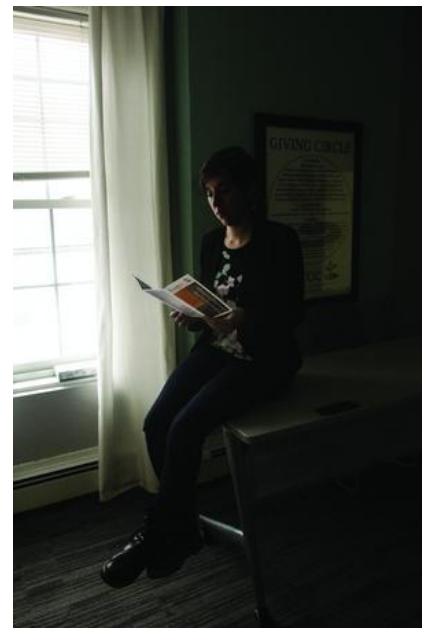
Amid the torrent of stories about workplace sexual harassment across industries, Warnick's story stands out for its severity. Many people are now talking about how professional cultures of sexism and harassment hinder women's careers. Fewer are talking about how acts of sexual violence can derail women's lives, or how companies can help prevent them.

TE Connectivity declined to comment on specifics of Warnick's claim, citing policies meant to protect employee privacy, but sent a general statement in response to a request for comment.

"TE Connectivity is committed to providing a work environment where every employee feels safe, valued and engaged, and we take all reports of harassment or inappropriate conduct seriously," a spokesperson for the company wrote in an emailed statement. "We have extensive policies, training and communications that reinforce our commitment to a safe and respectful workplace, along with multiple widely publicized channels for reporting incidents."

Warnick, who now volunteers at the [Boston Area Rape Crisis Center](#), decided to go public to help workers and company leaders recognize that sexual harassment media coverage is not just about celebrities falling from grace — it is about protecting employees from harassment before it turns into physical violence.

"I still see harassment in the workplace in the midst of all this," Warnick said. "If people (start) connecting harassment to rape, they might care more about harassment. For whatever reason, right now, I just don't think people care that much about harassment."



W. MARC BERNSAU

Kim Warnick at the Boston Area Rape Crisis Center in Cambridge where she volunteers.

There is little reliable data on how often rape happens in a professional setting or between co-workers, especially because victims often decide it's in their best interest not to report such incidents, according to experts. A report from the U.S. Bureau of Justice Statistics in 2001, the most recent such data available, found that an average of 36,500 rapes and sexual assaults are estimated to have occurred in workplaces annually between 1993 and 1999. A few researchers and advocacy groups have studied the issue more closely in industries with vulnerable, low-income populations — like restaurants and farms — but little attention has been paid to rapes that occur in white-collar work environments.

For these reasons, few companies equip their HR employees with the training and resources necessary to properly handle explosive allegations such as rape.

“Sexual harassment is something that every HR official will see, but rape is not,” [Barry Miller](#), a labor and employment lawyer in the Boston office of Seyfarth Shaw, said. “I think of it as war versus nuclear war. It’s a totally different thing.”

Miller has been practicing employment law for 15 years and estimates that the corporate clients he works with employ roughly 100,000 people collectively. He said he sees reports of workplace sexual violence similar to Warnick’s perhaps once or twice per year. “It happens,” said Miller.

Patterns of assault

There are lessons in Warnick’s story for HR teams and other executives who want to better protect their employees and themselves from the effects of sexual violence in the workplace. An accusation of rape by a co-worker may feel so extreme that it would appear to have little in common with reports of sexual comments or unwanted back rubs, but experts contend that responding decisively to minor incidents is the best way to prevent major ones, including sexual violence.

Warnick said she did not immediately report the rape in part because she had no confidence that the company would take action against the manager. She said she had seen questionable behavior by others toward women in the past, and even wore a fake wedding ring in the office to deter sexual advances of male colleagues and clients.

That’s a typical pattern among allegations of sexual assault in the workplace, according to [Gina Scaramella](#), executive director of the Boston Area Rape Crisis Center.

Generally, when someone is accused of sexual violence, other prior inappropriate behavior has gone unaddressed, Scaramella said. “What are you supposed to think when you are victimized? ... ‘Everyone knew, nobody seemed to care, so why would I risk my career?’ ” Scaramella said.

There is also little research about risk factors that can lead to rape in a professional organization. A report last year from the U.S. [Equal Employment Opportunity Commission](#) identified a few characteristics that make workplaces more susceptible to harassment generally: homogeneous workplaces, lots of younger workers, significant power disparities among employees, and cultures that encourage alcohol consumption.

It doesn’t help that many companies have barely revamped their approach to sexual harassment in the past 25 years, Miller said, leaving their harassment trainings as rote exercises and their policies as lifeless words in an employee handbook.

Of course, even a company with all those characteristics can protect its employees from harassment and violence. Periodic trainings in unconscious bias or bystander intervention can help, but it really comes down to supervisors taking seriously minor incidents or inappropriate comments.

“If companies have thought about it before, it’s been from the perspective of corporate liability and/or sex harassment policies,” Scaramella said. “Like anything, behavior is influenced not only by a policy, but by how everybody is instructed ... and whether it has any life or legs in the day-to-day.”

How it’s handled

Warnick began looking for a new job after the alleged assault, and says that’s one reason she decided against reporting the incident right away. However, she was offered a new position within TE SubCom, and so in mid-August of 2015 — about two and a half months after the alleged rape — Warnick decided to report it to HR with the idea that she would stay at the company if it handled the case properly.

Colby Bruno, senior legal counsel for the [Victim Rights Law Center](#), said she advises victims of rape to file a police report and take out a restraining order against their assailant as soon as possible, despite the emotional difficulty. Even if the victim doesn't intend to pursue a criminal case, those actions make the report look more credible and create a paper trail that employers must consider.

"I don't like that, but that's the truth," Bruno said. "In our day and age, still, a victim's word isn't enough."

Warnick, like most victims, had no attorney when she reported the rape to the human resources department. She said TE SubCom launched an investigation that ultimately lasted six or seven weeks. During those weeks, Warnick said, she received little communication from company executives about that investigation.

As is standard in such cases, an outside attorney took the lead, according to Warnick. The attorney asked Warnick about the intimate details of the night and about the length of time between the incident and her decision to report, among other things, Warnick said.

The statement from a TE Connectivity spokesperson addressed how the company handles reports, saying "every incident report we receive, including this one, is thoroughly examined by internal and/or external investigators. And in cases where reports of inappropriate behavior are substantiated, we take immediate corrective action that can range from performance counseling to termination or reporting to law enforcement in cases where we find that criminal activity may have occurred."

Miller, the employment lawyer, said typical "best practice" for companies responding to rape accusations includes keeping the investigations short, keeping accusers up to date on progress, and putting the accused employee on leave. But Miller said that no matter how much companies try to prepare for allegations of sexual violence, most companies are "never really prepared when something like that happens."

"I would say everybody's caught off guard. Nobody expects it," Miller said. "It's an event that shakes everybody involved, including HR."

Warnick says, at the end of the investigation, an HR official told her the investigation didn't turn up enough evidence to support her account. Warnick started to cry, and she says she quit on the spot.

Bruno, of the Victim Rights Law Center, said victims of sexual assault are often the ones who leave their companies. A cultural predisposition toward an "innocent until proven guilty beyond a reasonable doubt" standard — which is not the standard that employers need to meet to fire an accused employee — coupled with corporate self-interest often means that investigations end inconclusively, and both employees are allowed to stay.

"It's easier for the company to say 'Sorry, there's not enough evidence.' And that's hard to refute," Bruno said. The story usually ends there, from the company's perspective. "Very few victims are going to go forward and try to sue the company or anything like that because they've already been through everything. They don't want to go through any more."

Warnick did pursue the matter further. She found a lawyer who helped her file a complaint with the Equal Employment Opportunity Commission in March 2016, a copy of which was obtained by the Business Journal. The complaint alleged that TE SubCom had violated Chapter VII of the Civil Rights Act of 1964, specifically accusing the company of failing to discipline the accused employee or to take remedial action in response to her rape report.

Warnick said she and her lawyer had one phone interview with an EEOC investigator, but the agency ultimately dismissed the complaint. In response to a Business Journal request, the EEOC did not say what factors led the agency to dismiss Warnick's complaint, saying it's legally prohibited under Title VII from sharing details about its investigations.

Once the EEOC claim was dismissed, Warnick would have been able to file a civil lawsuit against the company if she wanted, but her lawyer advised her that a lawsuit against a company as large as TE SubCom would be expensive and unlikely to succeed. In 2016, Warnick decided to file a police report in New Castle, New Hampshire, where the alleged rape had occurred, because she wanted to have a charge on the record in case something were to happen again.

An officer at the New Castle police department confirmed to the Business Journal that in 2016 Warnick had filed a police report alleging rape, but said the investigation has so far resulted in neither a warrant nor an arrest. He declined to share

more details.

Warnick's volunteer work at the crisis center includes telling her story and leading groups through training sessions that help bystanders learn to identify and diffuse potentially threatening situations.

"I found that once I started talking about it — not even in a public way but just to friends and family members — I was hearing all these stories of other people," Warnick said. "When I think about when and why rape happens, it's due to power differentials — and that is just so obvious it would happen at work. It started feeling not that surprising."

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